

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

WINSTAR GATEWAY NETWORK,
INC., a foreign corporation

Respondent.

PETITION

John Knox Walkup, Attorney General and Reporter for the State of Tennessee, (hereinafter "Attorney General"), files this Petition pursuant to Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of 1977 (hereinafter "the Act"), and would respectfully show the Court as follows:

1. The Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (hereinafter "the Division") and the Attorney General, acting pursuant to the Act, have investigated certain acts and practices of Winstar Gateway Network, Inc. (hereinafter, "Respondent" or "Winstar"). Upon completion of the investigation, the Division has determined that certain of Respondent's acts and practices, more specifically described in Paragraph 2 of this Petition, constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(2), (b)(5), (b)(12) and (b)(27), and Tenn. Code Ann. §§ 47-18-120.

2. Based upon their investigation of Respondent, the Division and the Attorney General allege the following:

(A) Respondent Winstar is a Texas corporation engaged in the practice of offering long distance service to consumers. Respondent is a re-seller of long distance service. Basically,

Respondent purchases long distance from a long distance company such as AT&T or MCI or Sprint at a high volume/high discount to resell the purchased long distance time to consumers at a profit.

(B) Respondent conducted a nationwide campaign through its agent, TropicTel, to persuade consumers to use its long distance services. Through the use of sweepstakes box offerings, Respondent contacted Tennessee consumers.

(C) Respondent primarily used a sweepstakes box offering through TropicTel to contact consumers to promote its telecommunications services in an effort to induce those consumers to use Respondent's long distance service.

(D) Respondent employed the following deceptive or unfair practices:

(1) Misrepresenting to consumers to believe they were merely entering a sweepstakes when in fact the sweepstakes form was used to change the long distance carrier of the consumer;

(2) Switching consumers from their current long distance service providers without the knowledge or authorization of the consumer;

(3) Concealing or omitting material information from consumers about the true nature of the sweepstakes offering;

(4) Concealing or omitting material information from consumers about potential charges associated with switching long distance callers, including but not limited to switching fees, connection fees or contract termination penalties in the sweepstakes form;

(5) Failing to clearly and conspicuously disclose conditions and restrictions required by the Tennessee Gift and Award Statute, Tenn. Code Ann. § 47-18-120.

(E) Respondent's conduct constitutes unfair and deceptive acts or practices which are in violation of the Tennessee Consumer Protection Act.

3. Respondent denies the allegations set forth in Paragraph 2.

4. Upon completion of its investigation, the Division requested the Attorney General to negotiate, and if possible to accept, an Assurance of Voluntary Compliance in accordance with the provisions set forth in Tenn. Code Ann. § 47-18-107.

5. The Attorney General entered into negotiations with Respondent along with other state attorneys general and the parties have agreed to, and the Division of Consumer Affairs has approved, the attached Assurance of Voluntary Compliance.

6. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

7. The Division of Consumer Affairs, the Attorney General, and the Respondent, the parties who are primarily interested in the matters set forth in Paragraph 2 hereof, have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays

1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Tennessee Consumer Protection Act.